IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION (L) NO.1477 OF 2006
WITH
CHAMBER SUMMONS NO.229 OF 2006

S. Ramkrishna Nayak & Ors. ...Petitioners.
Vs.
State of Maharashtra & Anr. ...Respondents.
....
Mr. V.A. Thorat Senior Advocate with Mr. H.S. Anand and Ms.Sarita Donde for the Petitioner.
Mr. Pradeep Jadhav, AGP for Respondent No.1.
Mr. G.D. Utangale for Respondent No.2.
Mr. D.H. Mehta with Mr. S.G. Surana for Respondent Nos.5 & 6.
Mr. N.G. Thakkar with Ms. Soumya Srikrishna for Respondent No.7 (Applicant in Ch/s. No.229 of 2006.)
.....

CORAM : DR.D.Y.CHANDRACHUD, J.

September 13, 2006.

P.C.

By a final notification dated 11th May 2006 issued by the State of Maharashtra in exercise of the power conferred by Sub-section (1) of Section 14 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, land admeasuring 5820.61 sq.mtrs. comprised in seven survey numbers of village Wadhavan in the Taluka of Borivli has been acquired for enabling the Competent Authority to execute the following works

of improvement on the land:

> "(a) Laying of water mains, sewer and storm water;
>
> -(b) Provision of urinals, latrines, community baths and taps;
>
> -(c) Widening, realigning or paving of existing roads, lanes and pathways and constructing new roads, lanes and pathways;
>
> -(d) Providing street lights;
>
> -(e) Cutting, filling, levelling and landscaping the areas;
>
> -(f) Partial developments of the area with a view to providing land for unremunerative purpose such as parks, playgrounds, welfare and community centre, school, dispensaries, hospitals, police station, fire station and other amenities run on a non-profit basis;
>
> -(g) Demolition of obstruction or dilapidated buildings or portion of buildings;
>
> -(h) Redevelopment of slums existing on the land."

The consequence of a notification under Section 14(1) is provided by sub-section (2). Upon the publication of the notification in the Official Gazette, the land vests absolutely in the State Government free from all encumbrances. Once vesting is complete, the remedy of the land owner is to espouse his claim for compensation in the manner provided by the statutory provisions governing the acquisition of land. In view of the judgment of the Supreme Court

in **Municipal Council, Ahmednagar vs. Shah Hyder Beig**,[1] the High Court in the exercise of its jurisdiction under Article 226 of the Constitution would not be justified in exercising its extraordinary jurisdiction once vesting is complete. That principle which has been applied in the context of acquisition under the Land Acquisition Act, 1894, read with Section 126 of the Maharashtra Regional and Town Planning Act, 1966, must be applied as well to an acquisition under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, the acquisition being for a public purpose.

2. The First Petitioner before the Court is one of nineteen erstwhile owners of the land forming the subject matter of these proceedings. The Second Petitioner is a builder and developer who acquired the right, title and interest of the erstwhile owners under and in pursuance of a Deed of Conveyance executed on 6th March 2006. The transfer of interest by the First Petitioner to the Second Petitioner was after the acquisition proceedings had commenced. On 16th July 2005, a notice was issued by the Additional Collector and Competent Authority to the owners of the

1 2000(3) Mh. L.J. 1

land, calling upon them to submit their objections, if any, to the proposed acquisition, in order to enable the authority to execute works of improvement in relation to the land in question, which constituted a slum area. The land had been declared as a slum on 30th September 1977 and the declaration of the land as a slum area held the field, without objection by the erstwhile owners, for nearly 28 years before the notice of acquisition was issued. Both the Petitioners submitted their replies to the notice of acquisition on 10th December 2005. Acting at the behest of the Petitioners, a Member of the Legislative Assembly submitted a representation to the Chief Minister on 21st March 2006 against the acquisition. As envisaged in Section 14, a report was submitted by the Additional Collector to the State Government on 3rd January 2006 inter alia containing his recommendations in respect of the objections raised to the acquisition. Upon considering the report, the State Government issued a final notification on 11th May 2006. Whereas, the original notice of acquisition had proposed an acquisition of a total extent of 7291 sq.mtrs., the final notification provides for the acquisition of an area admeasuring 5820.61 sq.mtrs. That is because, in the meantime, the Municipal Corporation had already acquired a portion of the land falling

under the D.P. Road as a result whereof, 78 slum dwellers had been shifted. Accordingly, an order was passed by the Additional Collector on 16th May 2006 clarifying that out of the 240 slum dwellers whose names had been certified as being eligible for participation in the Slum Redevelopment Scheme, 78 would have to be excluded leaving a balance of 162 slum dwellers.

3. The Second Petitioner acquired the right, title and interest of the erstwhile owners conscious of the acquisition proceedings that were in progress and after a preliminary notice of acquisition was issued on 16th July 2005. The Second Petitioner has joined in these proceedings together with one of the nineteen erstwhile owners. The First Petitioner has, in any event, lost his right, title and interest as a result of the Deed of Conveyance which was executed in favour of the Second Petitioner on 6th March 2006. The Second Petitioner is a builder and developer. The consequence of a final notification under Section 14(1) is that the land has vested absolutely in the State Government. The remedy of the land owner then is to apply for compensation as envisaged in the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971.

4. The grounds that have been raised in the Writ Petition are: (a) While a public notice was given in the newspaper on 30th July 2005 for the acquisition of land admeasuring 7291.8 sq.mtrs., the final notification is for the acquisition of 5820.61 sq.mtrs.; (b) The First Petitioner was not given a sufficient opportunity and no individual notice was given; (c) The acquisition proceedings have been conducted in haste without considering that the property was taken up for development of a Slum Rehabilitation Scheme and the proposal pending before the Second Respondent; (d) The notice for acquisition proposed to acquire 7291.8 sq.mtrs. including land admeasuring 2476.80 sq.mtrs. which had already been acquired by the SLAO for a road over bridge; and (e) The public notice dated 30th July 2005 did not state the works of improvement that were proposed to be carried out.

5. There is absolutely no merit in any of the grounds contained in the Writ Petition. Though the preliminary notice under Section 14(1) proposed an acquisition of a larger tract of land, the final notification is confined to 5820.61 sq.mtrs. since a part of the land had already been acquired for the purposes of a road over

bridge. There is similarly no merit in the contention that there was non-compliance of the requirement of issuing a notice and considering the objections. An individual notice was issued. Both the Petitioners submitted their replies on 10th December 2005. The reply of the Second Petitioner, who is a developer, inter alia states that on 30th July 2004, he had submitted a Slum Rehabilitation Scheme in respect of a larger area of 20,295 sq.mtrs. but, that in the absence of the consent of the owners of the property, he could not proceed with the implementation of the Slum Rehabilitation Scheme and there was, therefore, a delay. There is no merit in the submission which was urged on behalf of the Petitioners that the acquisition is not for carrying out 'works of improvement' in relation to a slum area, within the contemplation of the Act. The expression “works of improvement” is defined in Section 2(j) of the Act as follows:

> “(j) “Works of improvement” includes in relation to any building in a slum area in execution of any one or more of the following works, namely:-
>
> -(i) repairs which are necessary;
>
> -(ii) structural alterations;
>
> -(iii) provision of light points, water taps and bathing places;

-(iv) construction of drains, open or covered;

-(v) provision for latrines, including conversion of dry latrines into flush latrines;

-(vi) provision of additional or improved fixtures or fittings;

-(vii) opening up, or paving of courtyards;

-(viii) construction of passages of roads;

-(ix) any other work including the demolition of any building or and part thereof which is in the opinion of the Competent Authority is necessary for executing any of the works specified above."

6. It is impossible to accept the submission that a Slum Rehabilitation Scheme will not fall within the definition "works of improvement" within the meaning of Section 2(j). The provisions of Section 2(j) cannot be construed technically and in a restrictive sense, but must be given a meaning consistent with the object of the State Legislature in enacting provisions for the improvement, clearance and redevelopment of slum areas. The judgment of a Learned Single Judge in **Ramkali Sitaram Kushawaha v. Deputy Collector**,[2] does not assist the case of the Petitioners. In any event, no such ground was raised to the acquisition when objections were submitted on behalf of the Petitioners under

2 2004(3) Bom. C.R. 14

Section 14(1). In the present case, a Slum Rehabilitation Scheme is in the process of being implemented. Annexure II, certifying the eligibility of the slum dwellers to participate in the scheme was issued on 18th February 2005. A letter of intent has been issued on 25th July 2006.

7. The intervener before the Court in Chamber Summons No.229 of 2006 would be at liberty to adopt such proceedings as are available to them in law for ventilating their grievances in regard to the acquisition.

8. The interference of this Court under Article 226 of the Constitution is, in the circumstances, not warranted. The petition is accordingly, dismissed.

....